

Message Text

PAGE 01 NATO 02457 181751 Z

63

ACTION EUR-25

INFO OCT-01 ADP-00 CIAE-00 PM-09 INR-10 L-03 NEA-10

NSAE-00 PA-03 RSC-01 PRS-01 GAC-01 USIA-12 TRSE-00

MBFR-03 SAJ-01 DODE-00 SS-15 NSC-10 ACDA-19 OMB-01

IO-12 RSR-01 /138 W

----- 102852

R 181650 Z MAY 73

FM USMISSION NATO

TO SECSTATE WASHDC 150

CONFIDENTIAL USNATO 2457

E. O. 11652: GDS, 12-31-79

TAGS: PFOR

SUBJECT: EXPERTS' STUDY OF SWISS PROPSAL ON JUSTICIABLE DISPUTES

REF: USNATO 2290

1. THERE FOLLOWS TEXT OF REPORT WHICH EMERGED FROM MEETING OF NATO EXPERTS ON SWISS PROPOSAL FOR A EUROPEAN SYSTEM FOR PEACEFUL SETTLEMENT OF DISPUTES. IT WILL BE DISCUSSED IN POLADS ON WEDNESDAY, MAY 23. DEPARTMENT'S COMMENTS WOULD BE WELCOME.

2. BEGIN TEXT

NATIONAL EXPERTS MET AT NATO HEADQUARTERS ON 8 TH AND 9 TH MAY, 1973, TO CONSIDER CERTAIN LEGAL ASPECTS OF THE SWISS PROPOSAL FOR A EUROPEAN SYSTEM FOR THE PEACEFUL SETTLEMENT OF DISPUTES AND TO ATTEMPT TO ESTABLISH A COMMON ALLIED POSITION WITH RESPECT TO THIS PROPOSAL. THE EXPERTS TOOK AS THEIR STARTING POINT DOCUMENT POLADS(73)13 WHICH SETS OUT THE PRELIMINARY VIEWS OF A NUMBER OF DELEGATIONS ON THE SUBJECT. THEY CONCLUDED THAT OF THE EIGHT QUESTIONS PUT FORWARD BY THE

CONFIDENTIAL

PAGE 02 NATO 02457 181751 Z

UNITED STATES, TWO WERE OF FUNDAMENTAL INTEREST. THESE WERE FIRSTLY, THE JURISDICTION OF THE BODY SUGGESTED IN THE SWISS PROPOSAL AND THE TYPES OF DISPUTE WHICH COULD BE BROUGHT BEFORE IT AND, SECONDLY, THE AUTONOMY OR OTHERWISE OF THAT BODY. THEY

ACCORDINGLY MADE A DETAILED COMPARATIVE SURVEY OF THE POSITIONS
ADOPTED IN THIS CONNECTION IN THE DIFFERENT CAPITALS.

2. AS REGARDS THE TYPE OF DISPUTE WHICH COULD BE
SUBMITTED TO THE PROPOSED BODY, THREE MAIN POINTS REMAINED
UPPERMOST DURING THE DISCUSSION.

ALTHOUGH CERTAIN DELEGATIONS THOUGHT THAT ALL LEGAL
DISPUTES WITHOUT DISTINCTION SHOULD BE SUBMITTED TO THE
ARBITRATION TRIBUNAL, THERE WAS A GENERAL TENDENCY IN FAVOUR
OF LIMITING THE COMPULSORY JURISDICTION OF THE TRIBUNAL TO
DISPUTES OF A JURIDICAL NATURE RELATING TO THE INTERPRETATION
AND APPLICATION OF THE INTERNATIONAL TREATIES AND AGREEMENTS
ARISING OUT OF A CSCE.

VIEWS, HOWEVER, DIFFERED AS TO WHAT SHOULD BE DONE
ABOUT DISPUTES RELATING TO POLITICAL QUESTIONS AND MATTERS OF
DEFENCE OR SECURITY. SEVERAL DELEGATIONS THOUGHT THAT THESE
SHOULD BE EXCLUDED FROM THE COMPULSORY JURISDICTION OF THE
TRIBUNAL.

THE GENERAL FEELING WAS THAT DISPUTES ARISING OUT
OF THE INTERPRETATION OF ANY DECLARATION OF PRINCIPLE GOVERNING
RELATIONS BETWEEN STATES MUST BE EXCLUDED. THIS WAS BECAUSE
OF THE RISK THAT JURISDICTION OVER SUCH MATTERS MIGHT LEAD
TO CASES NOT BASED ON JURIDICAL DISPUTES.

3. AS REGARDS THE CREATION OF NEW JURIDICAL MACHINERY
WITHIN THE CONTEXT OF THE SWISS INITIATIVE, HIGHLIGHTED THE
JURIDICAL AND PRACTICAL DIFFICULTIES INHERENT IN SUCH A
SOLUTION, THE MAJORITY OF DELEGATIONS WERE IN FAVOUR OF RECOURSE
TO EXISTING INSTITUTIONS AND ABOVE ALL TO THE INTERNATIONAL
COURT OF JUSTICE. THE REVISION OF THE STATUTE OF THE COURT,
CARRIED OUT IN 1972, WOULD ALLOW FOR GREATER FLEXIBILITY IN
THIS RESPECT, PARTICULARLY BY ITS PROVISION FOR THE
CONSTITUTION OF CHAMBERS TO HEAR SPECIFIC CATEGORIES OF CASES
OR OF AD HOC CHAMBERS TO HEAR A PARTICULAR CASE.

CONFIDENTIAL

PAGE 03 NATO 02457 181751 Z

IN THIS CONNECTION, IT WAS IN PARTICULAR FELT THAT
CARE MUST BE TAKEN, GIVEN THE UNCERTAINTY SURROUNDING THE
JURISDICTION OF SUCH A BODY, THE RESULTS OF A CSCE BEING A
MATTER FOR CONJECTURE, TO AVOID BEING CAUGHT UP IN A PROCESS
LEADING TO THE CREATION OF A NEW BODY WHICH INEVITABLY WOULD
HAVE SOME DEGREE OF PERMANENCE.

THE ARRANGEMENTS MENTIONED IN CONNECTION WITH THE
CREATION, AS A SUPPLEMENTARY COURT, OF AN AUTONOMOUS BODY
WHICH SHOULD NOT IN ANY EVENT ENCROACH UPON THE JURISDICTION
OF THE ICIJ, MAINLY STEMMED FROM DOUBTS, WITH REGARD TO, FIRST,
THE APPLICABILITY OF ARTICLE 26 OF THE STATUTE OF THE COURT,
SECOND, THE PROSPECTS FOR THE CREATION OF A PERMANENT REGIONAL

CHAMBER AND, THIRD, THE COMPOSITION OF SUCH A CHAMBER.

END TEXT MCAULIFFE

CONFIDENTIAL

NMAFVVZCZ

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptoning: X
Capture Date: 02 APR 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 18 MAY 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: boyleja
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973NATO02457
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: NATO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730558/abqcdzqx.tel
Line Count: 112
Locator: TEXT ON-LINE
Office: n/a
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: USNATO 2290
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags:
Review Date: 20 AUG 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20-Aug-2001 by boyleja>; APPROVED <19-Sep-2001 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXPERTS' STUDY OF SWISS PROPSAL ON JUSTICIABLE DISPUTES
TAGS: PFOR
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005